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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION**

In Re: Abel Camacho,

Debtor.

) Case No.: 6:23-bk-13055-SY
)
) **REPLY IN SUPPORT OF STATE OF**
) **CALIFORNIA'S MOTION FOR RELIEF FROM**
) **THE AUTOMATIC STAY**
)
) Date: October 25, 2023
) Time: 9:30 A.M.
) Courtroom: 302
)

Good cause exists to grant this motion on the grounds that (1) Creditor State of California (the “State”) seeks recovery primarily from third parties in the pre-petition state court case, *State of California v. California Interstate Express, LTD et al.* (Alameda County Superior Court Case No. 23CV032255) (the “State Court Action”), on the condition that the stay remains in effect as to the enforcement of any resulting judgment against Debtor Abel Camacho (“Debtor”) or the bankruptcy estate; and (2) the facts present here suggest Debtor acted in bad faith. Debtor concedes the first grounds. As to the second, Debtor misunderstands the State’s contentions.

I. The State Seeks Such Relief in Order to Pursue Recovery Against Third Parties in a State Court Action, Which Will Not Interfere with the Administration of the Bankruptcy Estate

Section 362 of the Bankruptcy Code requires the Court to grant relief from the automatic stay upon a showing of “cause”. 11 U.S.C. § 362(d). “Cause” is not defined in the Code. Instead, courts typically rely on the so-called *Curtis* factors, among others, to determine if cause exists. *In re Roger*, 539 B.R. 837, 844-845. Those factors are:

- (1) Whether the relief will result in a partial or complete resolution of the issues;
- (2) The lack of any connection with or interference with the bankruptcy case;
- (3) Whether the foreign proceeding involves the debtor as a fiduciary;
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) Whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditor’s committee and other interested parties;
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination;
- (9) Whether movant’s success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- (12) The impact of the stay and the “balance of hurt.”

1 *Id.* at 844-45 (quoting *In re Curtis*, 40 B.R. 795, 799-800 (Bankr.D.Utah 1984)). “The most important
2 factor in determining whether to grant relief from the automatic stay to permit litigation against the
3 debtor in another form is the effect of such litigation on the administration of the estate.” *Id.* at 845
4 (cleaned up).

5 Several *Curtis* factors tip in favor of granting the relief requested here. Granting this motion
6 would permit the State to recover from third parties, including Debtor’s former employer and its
7 insurance company.¹ Granting this motion will not interfere with the administration of the estate or
8 affect the property of the bankruptcy estate. (Debtor does not argue otherwise.) In the event the State
9 Court Action results in a judgment, the State agrees that the stay remains in effect as to enforcement of
10 such a judgment against Debtor or the bankruptcy estate. The State Court Action does not involve the
11 Debtor as a fiduciary. The State Court Action involves multiple parties. Finally, no creditor or other
12 interested party would be prejudiced by permitting the State Court Action to proceed. *See also, Roger*,
13 539 B.R. at 853 (reversing bankruptcy court’s denial of motion for relief from stay to pursue recovery
14 from third parties in another forum when multiple *Curtis* factors indicated that cause existed to grant
15 relief); *Matter of McGraw*, 18 BR 140, 142-143 (Bankr.W.D.WI 1982) (granting relief to personal injury
16 creditor who sought recovery from debtor’s employer and employer’s insurer).

17 Debtor does not oppose the motion on this ground. *See* Dkt. No.14, p.12:22-23. It appears, then,
18 that the parties agree that good cause exists to grant the relief requested in this motion under *Curtis* and
19 its progeny. This Court should as well and grant the motion.

20 **II. Debtor’s Lack of Good Faith Also Constitutes “Cause” for the Same Relief**

21 Debtor’s limited opposition is directed towards the “bad faith” grounds as cause for relief from
22 the automatic stay under 11 U.S.C. § 362(d). Debtor asserts, without citation, that the State’s arguments
23 “def[y] law and logic”. Dkt #14, p.9:25-26. Debtor is incorrect.

24 It is well established that lack of good faith can constitute “grounds” for lifting or modifying the
25 automatic stay. *In re Can-Alta Properties, Ltd.*, 87 B.R. 89, 91 (9th Cir. 1988); *In re Blas*, 614 B.R. 334,
26

27 ¹ It is presently unknown whether the terms of the insurance policy require Debtor to be named as a defendant in the State
28 Court Action as a prerequisite to recovering policy proceeds. Accordingly, the State cannot dismiss the Debtor from the State
Court Action at this time.

341 (D. Alaska 2019). Factors courts consider include whether there are few, if any, unsecured creditors, and the timing of the bankruptcy. *See, e.g., In re Can-Alt Properties, Ltd.*, 87 B.R. at 91-92; *In re Ebell Media, Inc.*, 462 Fed. Appx. 674, 675-76 (9th Cir. 2011).

Those factors are present in this case. The State is by far the largest unsecured creditor, as \$2,135,909.00 of Debtor's \$2,145,765.00 in total liabilities (or 99.5%) are owed to the State. *See* Dkt. No. 11, pp.11-13 (Official Forms 106Sum and 106E/F). Debtor did not file his petition until after he was served with the State Court Action complaint. (*Id.*, p.7, ¶ 6.e.(2), p.32.) There is no evidence that Debtor was being pursued by other creditors before filing for bankruptcy. Further, Debtor testified that his only reason for filing for bankruptcy was to escape an inevitable judgment against him in the State Court Action. *See* Dkt. No. 11, p.24:9-10, pp.22:15-23:6. This is a "no-asset" case. If Debtor has no assets to protect, no assets are at risk in the event of a judgment against Debtor.² Therefore, the only purpose served by filing the bankruptcy petition is to delay the State Court Action and hinder the State's recovery against third parties in that action. These facts warrant granting the State relief from the Stay. *In re Ebell Media, Inc.*, 462 Fed. Appx. at 675-76 (affirming bankruptcy court's termination of automatic stay where bankruptcy case involved essentially a two-party dispute, there was no estate to be administered, and the only practical purpose of filing the bankruptcy petition was to stop litigation in another forum).

Debtor's limited opposition accuses the State of misleading the Court as to the existence of an agreement or agreements between Debtor and his former employer. However, Debtor reads into the motion arguments that are not there. The State does not contend that any agreement between Debtor and his former employer constitutes bad faith. (*See* Dkt. No. 11, p.7 ¶ (e) (omitting any reference to such agreements in grounds for motion).) Debtor's personal attacks are unwarranted.

There are facts in this case from which one can conclude that Debtor lacked good faith in seeking bankruptcy protection. These facts justify relief from the automatic stay to permit the State to pursue recovery from third parties.

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² See also Cal. Lab. Code § 2802 (requiring employers to indemnify employees for losses incurred through scope of employment).

1 **III. Conclusion**

2 Good cause exists to grant the requested relief on two grounds: (1) because the State seeks
3 recovery primarily from third parties in the State Court Action and agrees that the Stay remains in effect
4 as to enforcement of any resulting judgment against Debtor or the bankruptcy estate; and (2) because
5 Debtor's words and actions evidence bad faith. Debtor agrees as to the first ground and attacks a straw
6 man with the second. Therefore, the Court should grant this motion.

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8 Dated: October 13, 2023

ERIN HOLBROOK
G. MICHAEL HARRINGTON
MARK GUENZI
DEBORAH L. GOODMAN

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11 By /s/ Deborah L. Goodman
DEBORAH L. GOODMAN

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13 *Attorneys for Creditor State of California,*
14 *acting by and through the Department of Transportation*
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
111 Grand Avenue, Suite 11-100, Oakland, CA 94612

A true and correct copy of the foregoing document entitled (*specify*): REPLY IN SUPPORT OF STATE OF CALIFORNIA'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 10/17/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

1 - Debtor's Attorney via EMAIL: John D. Sarai at john@shield.law

2 - Bankruptcy Trustee via Overnight Mail: Lynda T. Bui (TR), Shulman Bastian Friedman & Bui LLP, 3550 Vine Street, Suite 210, Riverside, CA 92507;

3 - Judge via Overnight Mail: Hon. Judge Scott H. Yun, RIVERSIDE DIVISION, U.S. Bankruptcy Court, 3420 Twelfth Street, Suite 345, Riverside, CA 92501

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.
10/18/2023 EMIGDIO LOPEZ-ACOSTA

Date

Printed Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.